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Federal Communications Commission

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Small Business Market Entry Barriers Forum
under

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Section 257 of the Telecommunications Act of 1996
hosted by the Office of General Counsel
and
Office of Communications Business Opportunities

GN Docket No. 96-113

September 24, 1996
1:00 - 5:00 p.m.

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Testimony of Matthew M. Polka, Panelist
Vice President and General Counsel
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MATTHEW M. POLKA
Vice President And General Counsel
Star Cable Associates

FCC Forum on Small Business Market Entry Barriers
Tuesday, September 24, 1996

Testimony

I would like to sincerely thank the Commission for inviting me to be here today. I appreciate the opportunity to illuminate the specific and unique concerns of small cable television companies across the United States.

This opportunity is especially welcome because if we want to ensure that the citizens of rural and small-town America receive the benefits of new telecommunications technologies and services, then we must ensure that the needs of the small cable providers of these services are met.

My name is Matt Polka, and I am the vice president and general counsel of Star Cable Associates, based in Pittsburgh, Pennsylvania. Star is an operator of small cable systems in three states -- Louisiana, Ohio and Texas. We serve 41,000 subscribers from 37 separate head-ends with an average head-end size of 1,100 subscribers per head-end. However, some of our head-ends are as small as 100 subscribers. The average density that we serve in our systems is less than 20 homes per mile. Most times we are down to about 15 homes per mile. Virtually all of our systems are in rural and small-town settings.

Star Cable started in the cable television business in 1986 as a result of the deregulation of the cable television industry. Our company saw the need back then to provide cable service to rural areas that hadn't received it before.

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We still see the need to provide new telecommunications services to our customers. As we see it, we have developed the experience over 10 years to serve the needs of rural and small-town America. These needs and concerns are much different than providing service in a larger urban setting. Our feeling is that if anybody can provide new telecommunications services to our customers, we can because we have the experience and we can do it better. Our feeling is also that if small cable television companies are not given the opportunity through the Commission's regulatory proceedings to provide new services to our customers, then maybe no one will -- at least not to the extent and level that we know we can do.

I am here today representing not only my company, but also small cable companies everywhere. Just about my entire professional career has been spent working with small cable companies -- first for five years in private legal practice and then for the last six with Star Cable. I have been a board member of the Small Cable Business Association for the last three years and have served on the SCBA's executive committee for two. As you know, the SCBA is an association dedicated to representing the specific needs of small cable companies everywhere. Our current membership totals about 300 member companies serving approximately 2,000,000 subscribers. As you know too, the SCBA has been very active at the Commission filing comments in most of the FCC's ongoing cable dockets. But I'm here today to speak of the needs of all small cable companies -- SCBA members or not. Our issues are common and our issues are unique.

Small cable companies face barriers to entry into new telecommunications markets and services from potential competitors, such as local exchange carriers that it make it difficult for a small cable company to seek interconnection, and from statutes and regulations that impose undue burdens on small cable companies or allow others to create barriers for small cable. That's why this proceeding is so important to globally assess the impact the Commission's regulations have on small cable. These concerns are not new, having been raised previously by the SCBA and others in numerous past and current rulemaking proceedings. The Commission must

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positively act to ensure that these barriers to entry fall, allowing small cable companies to continue to be the workhorse for carrying new telecommunications services to small-town and rural America as it has been for years. The Regulatory Flexibility Act and Section 257 of the 1996 Telecommunications Act require nothing less.

For the Commission to adequately address the specific and unique needs of small cable companies and ensure that barriers to entry fall, the Commission must do the following:

1. **Craft Meaningful Cable Act Reform Rules** that do not restrict small cable's access to capital financing markets. The Commission has in its hands right now a rulemaking that would enable it to establish reasonable definitions of small business and set non-restrictive affiliation rules giving small cable access to sources of capital funding.

2. **Address Continued Price Discrimination in Programming Rates and Access** by certain independent programmers and also their refusal to deal with the National Cable Television Cooperative. Small cable companies are at a substantial competitive disadvantage compared to large cable operators, DBS providers and certain wireless providers. Huge programming price differentials continue to exist, even though such differentials cannot be cost-justified. This price discrimination creates a barrier that impedes the future growth and development of small cable. This is so especially when coupled with the high cost of retransmission consent to small cable, where demands have been placed on near channel-locked small cable systems, depriving the small cable company of desired programming to meet its customers' needs. If small cable capitulates in this battle over program pricing, then the high cost of programming will make small cable companies' services non-competitive -- another barrier to entry.

3. **Act to Rein in High Pole Attachment Costs** charged by many municipal and rural cooperatives without regard to the fairness in pricing required by the Pole Attachment Act and 1996 Telecommunications Act.

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Many small operators rely on attachments to poles owned by unregulated cooperatives. However, small cable has seen two- and three-digit increases in pole rental, many times as these unregulated cooperatives open new business ventures in selling DBS or wireless services. In fact, this week Star Cable received notice from a rural electric cooperative in Louisiana that its annual pole rent is increasing from \$6.00 per pole to \$10.00 per pole -- a 66% percent increase. The Commission needs to gather evidence of such abuses and report the need for corrective legislation, including eliminating the exemption of municipal and rural cooperatives from the Pole Attachment Act.

4. Require Leased Access Rules that Adequately Compensate Small Cable Companies for their true costs in meeting leased access requests. Under the Commission's proposed rules, small cable would be required to pay \$24 million just to initially comply with leased access notification and disclosure requirements. However, the small cable company would be required to give away the use of the channel for almost nothing. The sudden implementation of a requirement virtually ignored by programmers over the last 11 years would create a stampede of demand, causing much subscriber confusion and frustration. Small cable companies would be at a tremendous competitive disadvantage under these rules, given its costs to accommodate the leased access programmer, the chipping away at the small operator's precious channel capacity and the disincentive to add new channels or more channel capacity.

5. Set Strong National Interconnection Standards that require a simplified national mandatory arbitration procedure in the event of a dispute regarding interconnection between competing parties. The Commission must set forth a specific arbitration procedure to settle interconnection disputes between small cable companies and incumbent local exchange carriers. This procedure would provide fair and evenhanded treatment to all parties. In the event of a dispute, the Commission should act as the arbiter. Otherwise, the national arbitration standard should be imposed on all state public service commissions.

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In addition to these points, it is important for the Commission to use the **Telecommunications Development Fund** in a positive way to encourage lending to small cable. Also, the Commission should ensure that it **Avoids an Overbroad Interpretation of the Right-of-Way Management Authority** given to municipalities restricting small cable's ability to extend and enhance its systems.

The specific and unique concerns of small cable companies are not new to the Commission. All of these concerns that I mentioned, as well as others, are before the Commission right now. The Commission has the power -- right now -- to do what's right for small-town and rural America.

Today's forum is a positive step in that direction.

I sincerely thank you again and appreciate your time and attention.

Respectfully submitted,



Matthew M. Polka

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